

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**REPLY TO OBJECTION AND RESERVATION OF RIGHTS OF FINANCIAL
GUARANTY INSURANCE COMPANY TO URGENT MOTION FOR ENTRY OF AN
ORDER APPROVING STIPULATION AND CONSENT ORDER BETWEEN TITLE III
DEBTORS (OTHER THAN COFINA) AND THE PUERTO RICO FISCAL AGENCY
AND FINANCIAL ADVISORY AUTHORITY ACTING ON BEHALF OF THE
GOVERNMENTAL ENTITIES LISTED ON APPENDIX “A” REGARDING THE
TOLLING OF STATUTE OF LIMITATIONS (DOCKET NO. 6580) AND TO THE
RESERVATION OF RIGHTS OF AMBAC ASSURANCE CORPORATION TO THE
URGENT MOTION FOR ENTRY OF AN ORDER APPROVING STIPULATION AND
CONSENT ORDER BETWEEN TITLE III DEBTORS (OTHER THAN COFINA) AND THE
PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY ACTING
ON BEHALF OF THE GOVERNMENTAL ENTITIES LISTED ON APPENDIX “A”
REGARDING THE TOLLING OF STATUTE OF LIMITATIONS (DOCKET NO. 6592)**

The Commonwealth of Puerto Rico (the “Commonwealth”), the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), the Puerto Rico Highways and Transportation Authority (“HTA”), and the Puerto Rico Electric Power Authority

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

(“PREPA”), each in its capacity as a Title III debtor (the Commonwealth, ERS, HTA and PREPA together the “Title III Debtors”), and each by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the representative of Title III Debtors, pursuant to Section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”)², respectfully submit this *Reply to Objection and Reservation of Rights of Financial Guaranty Insurance Company to Urgent Motion for Entry of an Order Approving Stipulation and Consent Order between Title III Debtors (other than COFINA) and the Puerto Rico Fiscal Agency and Financial Advisory Authority Acting on Behalf of the Governmental Entities Listed on Appendix “A” Regarding the Tolling of Statute of Limitations (Docket No. 6580) and to the Reservation of Rights of Ambac Assurance Corporation to the Urgent Motion for Entry of an Order Approving Stipulation and Consent Order Between Title III Debtors (other than COFINA) and the Puerto Rico Fiscal Agency and Financial Advisory Authority Acting on Behalf of the Governmental Entities Listed on Appendix “A” Regarding the Tolling of Statute of Limitations (Docket No. 6592).*

Background

1. On April 28, 2019, the Oversight Board, as representative of the Title III Debtors, jointly with the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) on behalf of certain governmental entities described therein, filed the *Urgent Motion for Entry of an Order Approving Stipulation and Consent Order between Title III Debtors (Other than Cofina) and the Puerto Rico Fiscal Agency and Financial Advisory Authority Acting on Behalf of the Governmental Entities Listed on Appendix “A” Regarding the Tolling of Statute of Limitations* (the “Urgent Motion”). See Docket No. 6535.

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

2. On April 30, 2019, Financial Guaranty Insurance Company (“FGIC”) filed the *Objection and Reservation of Rights of Financial Guaranty Insurance Company to Urgent Motion for Entry of an Order Approving Stipulation and Consent Order Between Title III Debtors (Other than COFINA) and the Puerto Rico Fiscal Agency and Financial Advisory Authority Acting on Behalf of the Governmental Entities Listed on Appendix “A” Regarding the Tolling of Statute of Limitations* (“FGICs Objection”). See Docket No. 6580.

3. On April 30, 2019, Ambac Assurance Corporation (“Ambac”) filed the *Reservation of Rights of Ambac Assurance Corporation to the Urgent Motion for Entry of an Order Approving Stipulation and Consent Order Between Title III Debtors (Other than COFINA) and the Puerto Rico Fiscal Agency and Financial Advisory Authority Acting on Behalf of the Governmental Entities Listed on Appendix “A” Regarding the Tolling of Statute of Limitations* (together with “FGICs Objection” referred to hereafter as the “Objections”). See Docket No. 6592.

Argument

4. The Stipulation and Consent Order between Title III Debtors (Other than COFINA) and the Puerto Rico Fiscal Agency and Financial Advisory Authority Acting on Behalf of the Governmental Entities Listed on Appendix “A” Regarding the Tolling of Statute of Limitations (the “Stipulation”) was executed by and among the Title III Debtors and AAFAF, to preserve any potential causes of action for the benefit of the Title III Debtors and its unsecured creditors, and to promote judicial economy.

5. The Stipulation does not purport to constitute an admission by any of the non-debtor governmental entities, the Oversight Board or AAFAF that any claims exist for the benefit of any Title III Debtor. Moreover, the Stipulation does not purport to effect a waiver of

any substantive defenses that the non-debtor governmental entities may assert against any such potential claims, other than the tolling of the statute of limitations.

6. Rather than require the Title III Debtors to consume resources in the commencement of potentially unnecessary litigation, further taxing already stretched resources, the non-debtor governmental entities, the Oversight Board and AAFAF have elected to defer consideration of any such potential claims, if any, in an orderly fashion, without the potential expiration of any applicable statute of limitations.

7. The Objections are devoid of any substantive arguments to support the contention that this Court should not approve the Stipulation.

8. Rather, the Stipulation's sole purpose is to consensually preserve potential value for the benefit of the Title III Debtors and their creditors, reserving the right of any party with standing to assert any substantive, non-statute of limitation defenses to any potential claims from the Title III Debtors against any of the governmental entities identified in Exhibit A of the Stipulation.

WHEREFORE the Title III Debtors respectfully request the Court to approve and enter the Stipulation, attached as **Exhibit A** to the *Urgent Motion For Entry of Order Approving Stipulation and Consent Order Between the Title III Debtors (other than COFINA) and the Puerto Rico Fiscal Agency and Financial Advisory Authority Acting on Behalf of the Governmental Entities Listed in Appendix "A" Regarding the Tolling of the Statutes of Limitations* filed at Docket No. 6535, and grant the Title III Debtors such other relief as is just and proper.

Dated: May 1, 2019
San Juan, Puerto Rico

Respectfully submitted,

/s/ Brian S. Rosen

/s/ Hermann D. Bauer

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record, and all CM/ECF participants in the case.

/s/ Hermann D. Bauer

Hermann D. Bauer